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In the Supreme Court of the United States

OCTOBER TERM, 1956

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

PREMIER PEAT MOSS CORPORATION, ET AL., APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

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MAY 1957.

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York is reported at 147 F. Supp. 169, and is set forth in Appendix A to this statement. The decision of the Interstate Commerce Commission is reported at 66 M. C. C. 105.

JURISDICTION

This suit was brought under 28 U. S. C. 1336 to set aside certain orders of the Interstate Commerce Commission insofar as such orders find and conclude that peat moss is not embraced by the term "agricultural commodities" as that term is used in section 203 (b) (6) of the Interstate Commerce Act (49 U. S. C. 303

(b) (6)). The judgment of the district court is dated January 8, 1957, and was entered on January 21, 1957. The Commission's notice of appeal was filed in the district court on March 20, 1957.

The jurisdiction of this Court to review the judgment on direct appeal is conferred by 28 U. S. C. 1253 and 2101 (b), and is sustained by the following cases: *East Texas Motor Freight Lines* v. *Frozen Food Express*, 351 U. S. 49; *Frozen Food Express* v. *United States*, 351 U. S. 40; *American Trucking Associations* v. *United States*, 344 U. S. 298.

STATUTES INVOLVED

Sections 203 (b) (6) and 209 (a) (1) of the Interstate Commerce Act, Part II, 49 Stat. 543, as amended, 49 U. S. C. 303 (b) (6) and 309 (a) (1), provide in pertinent part:

> SEC. 203 (b) Nothing in this part except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operations or standards of equipment shall be construed to include * * * (6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation * * *.
>
> SEC. 209 (a) (1) Except as otherwise provided in this section and in section 210 (a), no person shall engage in the business of a contract carrier by motor vehicle in interstate or foreign commerce on any public highway or

within any reservation under the exclusive jurisdiction of the United States unless there is in force with respect to such carrier a permit issued by the Commission authorizing such person to engage in such business * * *.

QUESTION PRESENTED

Whether the district court erred in holding, contrary to the Interstate Commerce Commission, that peat moss is embraced by the term "agricultural commodities" as that term is used in section 203 (b) (6) of the Interstate Commerce Act, 49 U. S. C. 303 (b) (6).

STATEMENT

In 1953, nine motor carriers filed with the Commission applications, pursuant to section 209 of the Interstate Commerce Act, for permits to transport as contract carriers peat moss, ground or not ground, from New York and New Jersey piers in New York Harbor to points and places in New York, New Jersey, and Connecticut within 150 miles of New York City. The applicants moved for dismissal of the applications on the ground that peat moss is an agricultural commodity within the exemption of section 203 (b) (6) of the Act, and sought permits only in the event this contention was rejected. Intervening shippers of peat moss supported the applicants and, without formally intervening, the Secretary of Agriculture filed a brief contending that peat moss is an agricultural commodity. A number of motor carriers, motor carrier associations, and rail carriers intervened in opposition.

After a joint hearing on the nine applications, the examiner filed a report recommending that the Commission find that peat moss is an agricultural commodity and deny the applications. Thereafter, on December 9, 1955, the Commission, by Division 1, issued its report (66 M. C. C. 105), concluding that peat moss is not an agricultural commodity within the meaning of section 203 (b) (6), that authority is required for its interstate transportation, and that appropriate permits should be granted to applicants. Petitions for reconsideration were denied on April 10, 1956, by order of the entire Commission.

On June 1, 1956, this suit was filed by shippers of peat, some of which were intervenors before the Commission. As the court noted in its opinion (147 F. Supp. at 171), there is no dispute between the parties as to the facts; the sole question on the merits being whether the Commission's conclusion that peat moss is not an agricultural commodity within the meaning of section 203 (b) (6) is permissible. The uncontroverted findings of the Commission respecting the origin, physical properties, uses, and marketing of peat moss are set out in its report as follows (66 M. C. C. at 108, 109):

> Peat moss is composed of plants which were recently growing, or which grew many years ago, such as sphagnum moss, reeds, ferns, certain types of trees, other plants, or, in some cases, a mixture of these materials. This vegetation after being grown on the land, has ceased to live, and has undergone partial decomposition. Deposits are accumulated under water or in places waterlogged most of the

time. Organic matter decomposes very slowly under water. Thus the remains of vegetation growing in water, or falling into it tend to accumulate more rapidly than they decompose, until the accumulation of deposits is exposed to the air at the surface. From then on decomposition of the organic matter keeps pace with its accumulation. As the level of the bog is raised, new types of vegetation appear in response to the changing environment. At the site of a bog there usually is found on top various plants growing and living and sending their roots into the bog. When these plants die their seeds remain, and the dead plants enter into the process of decay, as did plants hundreds of years before them. When the dead matter is covered with water the decomposition is arrested. This process continues year after year for hundreds of years, and tends to build up a deposit of considerable depth. Therefore, at a bog there will be found living matter growing on top; immediately below, matter that was alive a short time ago; and at successively lower depths, matter which has been dead for longer and longer periods. If trees have formed a large portion of the deposit it is known as woody peat, while if the deposit is comprised chiefly of sphagnum moss the result is a very fine, soft sphagnum-type peat moss. The latter type is usually selected for the commercial trade, and is the type here under consideration. Peat moss is used primarily for soil improvement, as a fertilizer conditioner, as bedding for horses and cattle, and as poultry litter. To a limited extent, it is also used for packing plants, cut flowers,

and certain vegetables for shipments to market, and for other purposes. In 1950, for example, of approximately 256,000 tons produced in this country or imported, approximately 161,000 tons were used for soil improvement, 56,000 tons for fertilizer filler, 31,000 tons for poultry litter and stable bedding, and 8,000 tons for all other uses. All of the peat moss involved is imported, principally from Germany, but to some extent from Canada.

In harvesting peat moss, a usual preliminary step consists in draining at least the part of the bog selected for immediate use. Spadelike implements are used for cutting and removing peat moss in blocks. The blocks, often about 8 by 16 inches' surface measurement and cut to a depth of about 8 inches, are sometimes placed in ricks, or stacks to drain and to dry. A more rapid method of drying involves stacking the blocks on wooden frames. When handled in this way the blocks may be air dried in 2 or 3 weeks, while a whole season is often required for drying peat moss in ricks. After drying, the blocks are taken to a storage house, usually a shedlike structure, where they are shredded, baled, and made ready for shipment. The shredding devices are usually modifications of grain-threshing equipment. Pegs, which take the place of the concaves in a thresher, are set against springs to take care of lumps too hard for shredding. Sometimes roots and other coarse particles are removed during the shredding process. Very coarse sieves, perhaps of 3/8-inch mesh, may be used to separate the large pieces or aggregates not suitable for marketing. The peat moss is then

compressed into bales approximately 7.5 cubic feet and 3.5 cubic feet in size. The larger sized bales predominate in the shipments handled by applicants.

The court found unpersuasive the reasons advanced by the Commission in support of its determination that peat moss is not an agricultural commodity, and concluded that the Commission exceeded the limits placed upon its statutory powers in excluding the interstate transportation of peat moss from the exemption.

THE QUESTION IS SUBSTANTIAL

Unlike *East Texas Motor Freight Lines* v. *Frozen Food Express* 351 U. S. 49, the question here is not whether a commodity once concededly agricultural has been so processed as to become a manufactured product. Rather, it is whether peat moss should be classified as an agricultural commodity at all.

In *Determination of Exempted Agricultural Commodities*, 52 M. C. C. 511, 519, after an extensive investigation to determine the meaning and scope of the terms "agricultural commodities" and "manufactured products thereof," the Commission concluded that "the term 'agricultural commodities' as used in section 203 (b) (6) embraces all products raised or produced on farms by tillage and cultivation of the soil (such as vegetables, fruits, and nuts); forest products; live poultry and bees; and commodities produced by ordinary livestock, live poultry, and bees (such as milk, wool, eggs, and honey)." That this definition is an entirely reasonable and, indeed,

broad construction of the term is apparent from a perusal of the dictionary definitions considered by the Commission and set out in the report (52 M. C. C. at 517–518).[1]

In concluding in the instant case that peat moss should not be classified as an agricultural commodity, the Commission pointed out that it does not come within the above definition and said (66 M. C. C. at 109):

> * * * It is not a commodity raised or produced on the farm by tillage and cultivation of the soil. And aside from this, it is not in the nature of a crop which once having commenced growth in the air or water, can be harvested within any period capable of reasonable forecast by living man. * * *

We submit that this conclusion is reasonable and that it was error for the district court to reverse.

Peat moss is composed of vegetation which has long since ceased to live and has undergone partial decomposition. It accumulates under water in bogs

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[1] More recently, Webster's New International Dictionary (2nd Ed., 1956) defines "agricultural" and "agriculture" as follows:

"Agricultural. Of, pertaining to, or dealing with agriculture; * * *.

"Agriculture. The art or science of cultivating the ground, and raising and harvesting crops, often including also feeding, breeding, and management of livestock; tillage; husbandry; farming; in a broader sense, the science and art of the production of plants and animals useful to man, including to a variable extent the preparation of these products for man's use and their disposal by marketing or otherwise. In this broad use it includes farming, horticulture, forestry, dairying, sugar making, etc."

as the result of a continuous process over a period of hundreds of years. Only under special circumstances may it be ready for digging in as short a period as fifteen or twenty years. "Harvesting" consists in draining the part of the bog selected, cutting and removing the peat in blocks with spadelike implements, and stacking the blocks to dry. After drying the blocks are shredded, baled, and made ready for shipment.

Not a forest product, and in no sense an ordinary farm crop, peat moss is similar in many respects to such obviously nonagricultural products as coal, lignite, and petrified wood.[2] Like them, it is the result of years of conditioning by nature of decayed or partially decomposed vegetable matter which has not been planted for the purpose by man. Like coal and lignite, it is excavated or dug. Basically, coal, lignite, petrified wood, and peat moss are not agricultural for the reason that they are not tilled, cultivated or harvested in the manner of ordinary crops, and they have long been devoid of life. Admittedly, such commodities as wild berries, wild hay, and Spanish moss have been held to be agricultural by the Commission despite the fact that they are not produced by tillage and cultivation. But they are living, growing crops made available by nature's bounty and harvested by farmers as products of the soil.

[2] In the *Standard Industrial Classification Manual, Volume II (1942)*, page 14, prepared by The Technical Committee on Industrial Classification, Division of Statistical Standards under the sponsorship of the Bureau of the Budget, the production of peat is given the same classification as the mining of lignite.

This vital distinction destroys any attempt to draw an analogy between them and the lifeless product of years of decay and decomposition in water-logged areas of once living vegetation that is peat.

Of course, peat moss is widely used on farms and in gardening, but this does not make it an agricultural commodity. It need hardly be stated that the test is not the use to which a commodity is put, else commercial fertilizers and lime must similarly be classed as agricultural although their production takes place far from the farm.

The consumption of peat moss in the United States has steadily increased over the years (Ex. 10) so that today it is a significant item of commerce. For example, in 1950, approximately 256,000 tons of peat moss were used in this country—much of it, and all that is involved in the present case, having been imported from abroad. (66 M. C. C. at 109; Ex. 10.)

This court has recognized that the purpose of Congress in enacting Part II of the Interstate Commerce Act was to promote a healthy system of regulated motor carrier service to serve the entire public. In *American Trucking Associations* v. *United States*, 344 U. S. 298, 312, the Court said:

> * * * Then the industry was unstable economically dominated by ease of competitive entry and a fluid rate picture. And as a result, it became overcrowded with small economic units which proved unable to satisfy even the most minimal standards of safety or financial responsibility. * * *

And the Court has held that all of the provisions of the Act must be interpreted so far as possible to further this legislative purpose. As remedial legislation, exemptions from its compass should be construed so as to make effective its dominant purposes.

In substituting its judgment for that of the Commission under these circumstances, the district court acted contrary to fundamental principles of judicial review prescribed by this Court in such cases as *Universal Camera Corp.* v. *Labor Board,* 340 U. S. 474, 488; *Rochester Telephone Corp.* v. *United States,* 307 U. S. 125, 129; *Mississippi Valley Barge Line* v. *United States,* 292 U. S. 282, 286; and *Interstate Commerce Commission* v. *Northern Pacific R. Co.,* 222 U. S. 541, 547.

Viewed as purely a question of law, we submit that the ultimate finding of the Commission should have been sustained. In *Levinson* v. *Spector Motor Co.,* 330 U. S. 649, 672, the Court pointed out that:

> * * * As conclusions of law, these do not have the same claim to finality as do the findings of fact made by the Commission. However, in the light of the Commission's long record of practical experience with this subject and its responsibility for administration and enforcement of this law, these conclusions are entitled to special consideration. * * *

And see *East Texas Motor Freight Lines* v. *Frozen Food Express,* 351 U. S. 49, 55 (dissenting opinion of Mr. Justice Burton).

CONCLUSION

For the reasons stated, the question presented by this appeal is substantial and of public importance.

Respectfully submitted.

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Washington 25, D. C.

MAY 1957.

APPENDIX A

United States District Court, Southern District of New York

Civil Action No. 110-131

NOVEMBER 8, 1956.

PREMIER PEAT MOSS CORPORATION, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Suit by peat moss producers and shippers, brought under 28 U. S. C. A. §§ 1336, 1398, 2284 and 2321–2325, to review, set aside and enjoin certain orders of the Interstate Commerce Commission holding that peat moss is not an agricultural commodity within the meaning of 49 U. S. C. A. § 303 (b) (6).

Mitchell Salem Fisher, Attorney for Plaintiffs.

Victor R. Hansen, Assistant Attorney General, James E. Kilday and James H. Durkin, Attorneys, Department of Justice; Paul W. Williams, United States Attorney, Robert W. Ginnane, General Counsel, and Leo H. Pou, Associate General Counsel, Interstate Commerce Commission, for Defendants.

Bernard Sobol, Robert S. Trigg and Carl Helmetag, Jr., Attorneys for Intervenor Railroads.

Before SWAN, *Circuit Judge*, and WALSH and CASHIN, *District Judges*

SWAN, *Circuit Judge:*

This action is the sequel to proceedings before the Interstate Commerce Commission initiated in 1953 by

applications of motor carriers, pursuant to 49 U. S. C. A. § 309, for permits to transport as contract carriers peat moss, ground or not ground, from New York and New Jersey piers in New York Harbor to points in New York, New Jersey and Connecticut within 150 miles of New York City. The applicants moved for dismissal of their own applications on the ground that peat moss is an agricultural commodity and therefore the transportation of it by contract carriers in interstate commerce is exempted from the permit requirements of § 309 by § 303 (b) (6);[1] they sought permits only in the event of rejection of this contention. The motion was supported by the Secretary of Agriculture, who filed a brief without formally intervening, and by intervening producers and shippers of peat moss, including plaintiffs in the present action. Several Railroads intervened and opposed the motion. The Examiner who heard the case took evidence as to the nature of peat moss, its use, the manner of harvesting it, and the need of shippers for motor carrier transportation. His Report recommended that the Commission should find that peat moss is an agricultural commodity and should dismiss the application for lack of jurisdiction. Division 1 of the Commission accepted the Examiner's findings of fact but ruled that peat moss is not an agricultural commodity within the statutory exemption, and that the applicants were entitled to permits as motor contract carriers. *Marino Trucking Co., Inc., Extension—Peat,* 66 M. C. C. 105. Petitions for reconsid-

[1] 49 U. S. C. A. § 303 (b) declares: "Nothing in this chapter * * * shall be construed to include * * * (6) motor vehicles used in carrying property consisting of ordinary livestock, fish, (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof) * * *."

eration were denied by the Commission on April 10, 1956, and the present suit was filed on June 1st praying that the orders of the Commission be set aside in so far as they conclude that peat moss is not an "agricultural" commodity within the meaning of the statute.

There is no dispute between the parties as to the facts. The merits of the controversy are whether the Commission was correct in ruling that peat moss is not an "agricultural" commodity within 49 U. S. C. A. § 303 (b) (6). But before reaching the merits it is necessary to consider the contention of the defendants and the intervening Railroads that the plaintiffs have no standing to maintain the present suit.

To attack an order of the Commission a plaintiff must show that he has "a legal right or interest which will be injuriously affected by the order."[2] The defendants, whose argument the Railroads also adopt, contend that the orders here involved do not affect any right of the plaintiffs because they do not require the plaintiffs to do or to refrain from doing anything; that all the plaintiffs allege by way of injury is that they will have to pay more for transportation of peat moss by regulated motor carriers than they did before the Commission ruled that peat moss was not an agricultural commodity, which is merely saying that the orders will have an adverse effect on the plaintiffs' economic position; and that this is not enough to give plaintiffs standing to attack the orders, since "They are entitled as shippers only to reasonable service at reasonable rates and without unjust discrimination."[3] We accept the legal propositions enunciated by the cited authorities but they do not dispose of the case

[2] *Moffat Tunnel League v. United States*, 289 U. S. 113, 119.

[3] *Sprunt & Son v. United States*, 281 U. S. 249, 255.

at bar. Here the question determinative of the shippers' standing to maintain the suit is whether or not the Commission has jurisdiction over motor carriers of peat moss. If it does, such carriers are required to establish and observe reasonable minimum rates and charges for the services rendered, and are prohibited from collecting less than the established minimum rates.[4] Hence the right of shippers to contract for transportation of peat moss is restricted to those motor carriers to whom permits are or may be issued, and the minimum rates payable are fixed by their filed schedules of rates. On the other hand, if the Commission does not have jurisdiction, the plaintiffs are free to get the best bargain they can from a motor carrier. For simplicity of discussion assume that the Commission should make a perfectly arbitrary ruling that tomatoes are not an "agricultural" commodity. Such a plainly erroneous determination would deprive a tomato farmer of the benefits Congress intended to confer by § 303 (b) (6), namely, those flowing from freedom to use unregulated motor carriers.[5] It would thus deprive him of a statutory right and would restrict his common law right to contract for transportation on any terms acceptable to the carriers. The plaintiffs have similar rights which the orders injuriously affect, if the Commission erred in excluding peat moss from the "agricultural" exemption. This is plainly stated in *Frozen Food Express* v. *United States*, 351 U. S. 40. There the plaintiff was a motor carrier transporting numerous commod-

[4] 49 U. S. C. A. § 318 (a).

[5] See *East Texas Motor Freight Lines* v. *Frozen Food Express*, 351 U. S. 49, 51: "The exemption of motor vehicles carrying 'agricultural (including horticultural) commodities (not including manufactured products thereof)' was designed to preserve for the farmers the advantage of low-cost motor transportation."

ities which the Commission ruled were nonexempt but which the carrier claimed were agricultural commodities. In holding that the complaint presented justiciable issues, the opinion states (pp. 43–44):

> The determination by the Commission that a commodity is not an exempt agricultural product has an immediate and practical impact on carriers who are transporting the commodities, and on shippers as well. * * * Carriers and shippers alike are told that they are or are not free to bargain for rates, that they must or must not pay the filed charges. The "order" of the Commission is in substance a "declaratory" one, see 60 Stat. 240, 5 U. S. C. § 1004 (d), which touches vital interests of carriers and shippers alike and sets the standard for shaping the manner in which an important segment of the trucking business will be done.

In *Consolidated Truck Service, Inc.* v. *United States*, D. C. N. J., decided September 28, 1936, Judge Biggs' opinion contains a dictum with respect to the rights of shippers, as follows: "If Consolidated does transport them [shelled nuts] it and its shippers will incur the penalties prescribed by the statute, the Commission having prohibited the transportation."[6] This is a further indication of the substantial interest which shippers have in the situation. In our opinion the the plaintiffs have standing to maintain the suit.

On the merits we think the Commission was wrong. Whether the statutory exemption should be construed to cover a product of nature having such physical characteristics as peat moss is a question on which the Commission's determination, although entitled to deference, does not conclude the courts.[7]

The Commission made the following findings:

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[6] See 49 U. S. C. A. § 322 (e).

[7] See *East Texas Lines* v. *Frozen Food Express*, 351 U. S. 49, 54.

Peat moss is composed of plants which were recently growing, or which grew many years ago, such as sphagnum moss, reeds, ferns, certain types of trees, other plants, or, in some cases, a mixture of these materials. This vegetation after being grown on the land, has ceased to live, and has undergone partial decomposition. Deposits are accumulated under water or in places waterlogged most of the time. Organic matter decomposes very slowly under water. * * * Therefore, at a bog there will be found living matter growing on top; immediately below, matter that was alive a short time ago; and at successively lower depths, matter which has been dead for longer and longer periods. If trees have formed a large portion of the deposit it is known as woody peat, while if the deposit is comprised chiefly of sphagnum moss the result is a very fine sphagnum-type peat moss. The latter type is usually selected for the commercial trade, and is the type here under consideration. * * *

In harvesting peat moss, a usual preliminary step consists in draining at least the part of the bog selected for immediate use. Spadelike implements are used for cutting and removing peat moss in blocks. The blocks, often about 8 x 16 inches surface measurement and cut at a depth of about 8 inches, are sometimes placed in ricks, or stacks, to drain and to dry. A more rapid method of drying involves stacking the blocks on wooden frames. When handled in this way the blocks may be air dried in 2 or 3 weeks, while a whole season is often required for drying peat moss in ricks. After drying, the blocks are taken to a storage house, usually a shedlike structure, where they are shredded, baled, and made ready for shipment. The shredding devices are usually modifications of grain-threshing equipment. * * *

The reasons advanced by the Commission for rejecting the Examiner's recommendation that peat moss be held to be an agricultural commodity are stated in a single paragraph of its opinion.[8] They are three: (1) that in an earlier decision the Commission had set forth a definition of "agricultural commodities" which Congress may be considered to have otherwise approved by implication when it adopted the 1952 amendment to include "(horticultural)";[9] (2) that peat moss is not within the earlier definition since it is not produced on a farm by tillage and cultivation of the soil; and (3) that it is not a crop which once having commenced growth in the earth, air or water, can be harvested within any period capable of reasonable forecast by living man.

None of these reasons do we find persuasive. The earlier decision made no mention of peat moss. Nor did its definition of agricultural commodities purport to be all inclusive. It merely lists commodities which it "embraces"; hence there is no implication that all not listed were excluded from the definition. Consequently the suggestion that Congress may be considered to have approved the definition can carry no implication that Congress approved a holding that peat moss was a nonexempt commodity. Moreover, the rationale is contra to *East Texas Lines* v. *Frozen Food Express*, 351 U. S. 49, where a commodity which had been denominated as nonagricultural in the

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[8] 66 M. C. C. 105, 109.

[9] In the earlier decision, *Determination of Agricultural Commodities*, 52 M. C. C. 511, 519, the Commission concluded that the term agricultural commodities as used in the section "embraces 'all products raised or produced on farms by tillage and cultivation of the soil (such as vegetables, fruits and nuts); forest products; live poultry and bees; and commodities produced by ordinary livestock, live poultry, and bees (such as milk, wool, eggs, and honey).'"

"Determination" case because it was a manufactured product, was held by the Supreme Court to be within the exemption.

The argument that peat moss is not within the definition because it is not produced by cultivation of the soil is likewise unpersuasive. In the earlier decision the Commission itself recognized as within the exemption numerous commodities which are not the result of tillage and cultivation; for example, forest products, wild berries, marsh hay, prairie grass, and Spanish moss.

The third reason advanced, namely, that peat moss is not a crop which can be harvested within any period of reasonable forecast is insufficient to distinguish it from other wild products which are admittedly "agricultural"; for example, long-lived, slow growing trees. Furthermore, there is testimony in the record that under certain conditions peat moss may be ready to harvest within fifteen or twenty years. It is harvested in the summer season, dried in the sun and then processed by cutting and baling. Neither the report of the Commission nor the report of the Examiner contains any finding as to the extent to which peat moss comes from farms. But the record shows it is dug both on land of farmers within the United States and on land of commercial peat moss companies. In some instances, farmers dig it themselves and bring loads of it to a peat moss company plant; in other instances, they may sell it in the ground and it is harvested by personnel of the company. If the essential nature of a commodity is "agricultural," it is irrelevant that at times it is harvested by commercial interests rather than the farmer himself, or that, as in the case at bar, the commodity is imported.

Indubitably peat moss is of vegetable origin. It

is "produced by nature from what was once vegetation, and chemically it is substantially the same as the vegetation from whence it is derived. In fact, its chief characteristic results from the fact that nature itself has arrested any substantial change which without the protection of water would otherwise have taken place. Its principal uses, too, are either agricultural or horticultural." [10]

The defendants urge that peat moss is unlike any commodity produced on a farm and is more in the nature of coal. But in the case of coal, although in origin derived from vegetation, the processes of nature have converted it into a mineral. Not so in the case of peat moss. There the processes of decay have not progressed far enough to cause any substantial change in its original chemical content.

All of the witnesses with expert qualifications, several of whom had also had farm experience, testified that peat moss is commonly regarded as an agricultural commodity. Under the circumstances above recited and in the absence of any evidence in the record which suggests that peat moss may properly be classified in some nonagricultural category, we can see no rational basis for disregarding the uniformity of expert opinion. We think the Commission exceeded the limits placed upon its statutory powers in excluding the interstate transportation of peat moss from the exemption provided by §303 (b) (6).[11] Accordingly, the orders under review must be set aside and an injunction against their enforcement will be granted.

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[10] Quoted from the Examiner's report.

[11] See *East Texas Lines* v. *Frozen Food Express*, 351 U. S. 49, 54.

If findings of fact and conclusions of law, supplementing those contained herein, are desired, the parties may submit proposals therefor within 15 days.

THOMAS A. SWAN,
Circuit Judge.
LAURENCE E. WALSH,
District Judge.
JOHN M. CASHIN,
District Judge.

APPENDIX B

United States District Court, Southern District of New York

PREMIER PEAT MOSS CORPORATION, GELLCO, INC., GARDEN SUPPLY SALES CORPORATION, LEWIS INTERNATIONAL COMPANY, NEW AMSTERDAM IMPORT CO. INC., ATKINS & DURBROW CONN. CORP., BRUCO PEAT MOSS CORPORATION, ASCOT PEAT MOSS CORP., CONRAD FAFARD, INC., EZL. DUNWOODY CO., I. H. NESTER & CO., J. M. TRADING CORP., EDMOND J. LANG, NATIONAL DISTRIBUTORS, INC., and THE PEAT MOSS ASSOCIATION, INC., PLAINTIFFS

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

THE BALTIMORE AND OHIO RAILROAD COMPANY, THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, ERIE RAILROAD, LEHIGH VALLEY RAILROAD COMPANY, NEW YORK CENTRAL SYSTEM, THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY and READING COMPANY, INTERVENORS

DECREE

Before Thomas W. Swan, Circuit Judge, Lawrence E. Walsh, District Judge and John M. Cashin, District Judge, being the statutory three-judge Court convened herein pursuant to the provisions of Title 28, Section 2284 of the United States Code.

This cause came on to be heard on the 3rd day of October 1956, at the U. S. Court House for the South-

ern District of New York, Foley Square, Borough of Manhattan, City and State of New York, and was argued by counsel for the plaintiffs, counsel for the defendants, and counsel for the intervenors, and upon consideration thereof and the decision and opinion of the Court filed herein, it is

ORDERED, ADJUDGED, DECREED AND DECLARED that peat moss is an agricultural commodity within the meaning, scope and intent of Section 203 (b) (6) of the Interstate Commerce Act (49 U. S. Code, 303 (b) (6)); and it is further

ORDERED, ADJUDGED AND DECREED that the report and order Division 1 of the Interstate Commerce Commission dated December 9, 1955, as affirmed by the report and order of the Interstate Commerce Commission of April 10, 1956, and the orders of the Interstate Commerce Commission entered on the 14th day of May 1956 with respect to the Carriers William Stokes and John A. Shaughnessy and with respect to the Carrier Anthony Russo on the 25th day of May 1956 and any other orders of the Interstate Commerce Commission in the proceedings before the Interstate Commerce Commission entitled

Docket Nos. MC 84805 Sub No. 2
MC 107585 Sub No. 3
MC 114223
MC 114224
MC 114225
MC 114226
MC 114234
MC 114236
MC 114283

Maine Trucking Co., Inc.
Frank DeVito d/b/a DeVito Warehousing & Trucking
Paul Michelsohn
John J. Michelsohn d/b/a Michelsohn Trucking Co.
Anthony Russo
William Stokes
Marvin Grifka d/b/a Holland Specialties
John A. Shaughnessy
Joseph Hammer d/b/a Hammer & Son

insofar as such order and orders find and conclude that Peat Moss is not embraced by the term "agricultural commodities" as that term is used in Section 203 (b) (6) of the Interstate Commerce Act (49 U. S. C. 303 (b) (6)), be and the same hereby are suspended, enjoined, annulled and set aside.

Dated: New York, N. Y., January 8, 1957.

THOMAS W. SWAN,
Circuit Judge.
LAWRENCE E. WALSH,
District Judge.
JOHN M. CASHIN,
District Judge.

Judgment entered January 21, 1957.

HERBERT A. CLARKSON,
Clerk.

JB.

U. S. GOVERNMENT PRINTING OFFICE 1957